

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1506

In The

UNITED STATES COURT OF APPEALS

For the Second Circuit

Docket No. T-8230

UNITED STATES OF AMERICA

Plaintiff-Appellee,

v.

NICHOLAS SAIA,

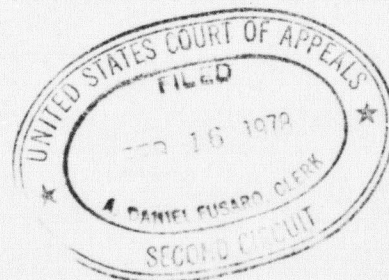
Defendant-Appellant.

On Appeal from the United
States District Court for the
Western District of New York.

APPENDIX

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1 V I N C E N T C. D I N A T A L E (111 West Huron Street,
2 Buffalo, New York), a witness called by and in behalf of the
3 Government, having been first duly sworn, was examined and
4 testified as follows:

5
6 DIRECT EXAMINATION BY MR. MELLENGER:

7 Q. Mr. DiNatale, where are you employed?

8 A. Internal Revenue Service.

9 Q. And what is your position there?

10 A. I am a Special Agent Criminal Investigator.

11 Q. And how long have you had this position?

12 A. Approximately fifteen years.

13 Q. And during the course of your career as a Special Agent
14 did you ever have occasion to participate in an investi-
15 gation of Empire Scrap Metals, Inc.?

16 A. Yes, I did.

17 Q. And did you ever have occasion to go to their office
18 on Lockport Road in Niagara Falls?

19 A. Yes.

20 Q. And when was the first such occasion?

21 A. The first time was July 14, 1969.

22 Q. And approximately what time during the day?

23 A. Approximately 12:30 in the afternoon.

24 Q. And what happened when you got there?

25 A. Special Agent Nicholas Como and myself went to the offices

1 - A

1 of Empire Scrap Metal, Incorporated, on Lockport Road
2 in Niagara Falls to contact one of the corporate officers.
3 When we arrived there, there was one individual in the
4 office. We identified ourselves to the individual as
5 Special Agents with the Internal Revenue Service and
6 produced our credentials for his review and asked if
7 there were any corporate officers available. The
8 individual said "No".

9 Q. Did this individual identify himself?

10 A. Yes, he did.

11 Q. Who did he identify himself as being?

12 A. He said his name was Nick Saia and he was the manager.

13 Q. And did you have a conversation with him at that time?

14 A. Yes, we did.

15 Q. And what was that conversation?

16 A. We advised Mr. Saia that we had been assigned investiga-
17 tion of the income tax liabilities of Empire Scrap Metal,
18 Incorporated for 1966, 1967 and 1968. We then asked
19 him if there were any officers of the corporation. Mr.
20 Saia indicated that Melanie Saia, his wife, was president
21 of the corporation. However, she didn't take an active
22 part in the business; that the business was his, he ran
23 the business himself and that he just put everything in
24 his wife's name.

25 Q. Did you ask him anything else about officers or directors?

2 - A

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WESTERN DISTRICT OF NEW YORK

1 A. Yes. We asked if --

2 MR. FEIN: Excuse me, your Honor. I object.
3 May I ask who asked who. He is using
4 the term "we".

5 THE COURT: Did he say, did you say?

6 MR. MELLENGER: I had asked him what else Mr. Saia
7 had said about officers and directors.

8 THE COURT: Overruled. Go ahead, Mr. DiNatale.

9 THE WITNESS: We had asked if there were any other
10 officers of the corporation and Mr. Saia
11 said there were no other officers and we
12 also asked about directors. He indicated
13 the only directors were the attorneys
14 that did the paperwork to set up the
15 corporation. However, they had no interest
16 or were not involved in the business.
17 We then asked if any of the family
18 members who were officers or employees
19 of the corporation. Mr. Saia indicated
20 they were not. He indicated that he had
21 two sisters, Ida Rugerio and Vincentia
22 Saia, both of whom were deceased and one
23 brother Sam Saia. We then asked if
24 Joseph Rugerio had worked for the
25 corporation and Mr. Saia said that he

3 - A

1 did not work for the corporation, he
2 hung around the scrap yard, he did odd
3 jobs, ran errands for cigarette money
4 but he did not work for the corporation.
5 We asked if Sam Saia worked for the
6 corporation.

7 MR. FEIN: Your Honor, I am going to object.
8 This statement, this interview is taking
9 place in July of 1969 and I think the
10 answers --

11 THE COURT: About whether he worked in July of
12 1969?

13 MR. FEIN: I don't know from the questions,
14 your Honor.

15 THE COURT: It is history. I will overrule it.
16 Go ahead, Mr. Mellenger.

17
18 BY MR. MELLENGER:

19 Q. You were stating what Mr. Nick Saia was telling you
20 regarding Sam Saia working for the corporation.

21 A. He had stated that Sam had never worked for the corpora-
22 tion. We advised Mr. Saia that the Niagara Falls City
23 Directory indicated that Sam Saia was an employee --

24 MR. RODENBERG: Your Honor, I am going to object
25 to all of this because there is no

4 - A

1 relevance between this testimony and the
2 counts in the indictment.

3 THE COURT:

I will overrule the objection.
4 It is a question he is putting to him.
5 Go ahead. What did you say, Mr. DiNatale?

6 THE WITNESS:

Well, we advised him according to
7 the City Directory of Niagara Falls that
8 Sam Saia was listed as a bonder. Mr.
9 Nick Saia said that Sam did not and never
10 worked for the corporation.

11
12 BY MR. MELLENGER:

13 Q. Did you ask him, - did you see any equipment around there
14 such as a truck or anything?

15 A. Yes. As we went to the offices we did observe a truck
16 in the scrap yard and asked Mr. Saia who the truck
17 belonged to.

18 MR. FEIN:

Your Honor, I am going to object
19 again because this is again back in '69,
20 not during the years that are involved
21 in this pending indictment.

22 THE COURT:

Ladies and gentlemen, it is sort of
23 background and history and I will admit
24 it at that level. If you find, - the
25 important thing for us to look at is the

5 - A

1 years in question. If the truck was not
2 the property of the corporation during
3 the years in question, we will just
4 ignore it. I suppose, however, that Mr.
5 Mellenger asking it intends to connect
6 this up in some way with his evidence
7 and for that reason we will listen to
8 it.

9
10 BY MR. MELLENGER:

11 Q. What did he say about the truck?

12 A. He said the truck belonged to the corporation and that
13 it was registered to the corporation and that it was
14 financed.

15 Q. Did you ask him anything about the books and records of
16 the corporation?

17 MR. RODENBERG: Your Honor, I am going to object
18 to that. That is posed in too broad a
19 fashion, your Honor, to get any kind of
20 response.

21 THE COURT: Overruled.

22 THE WITNESS: Yes. We asked Mr. Saia who handled
23 the records for the corporation. Mr.
24 Saia said that he did everything, he had
25 handled the records and that the type of

6 - A

65

1 records there were for sales he made out
2 a slip of paper. For purchases he made
3 out a slip of paper. These papers were
4 turned over to his accountant Robert
5 Perlman who came into the office once a
6 week. We then asked if the corporation
7 had a checking account. Mr. Saia said
8 that they hadn't had a checking account
9 for about three years and they deal
10 primarily in cash and they weren't able
11 to get an account.

12
13 BY MR. MELLENGER:

14 Q. Did you ask him whether or not he employed a bookkeeper?

15 A. We asked him if he had a bookkeeper and he said no, he
16 couldn't afford one, nor could he afford any other
17 employees.

18 Q. Did you ask him anything further about any employees?

19 A. I would have to refresh my recollection on that.

20 Q. Okay, I will withdraw the question. Did you ask him,
21 or what if anything did you ask him regarding responsi-
22 bilities for the preparation of the corporation returns?

23 MR. FEIN:

Your Honor, I object. I don't
24 think it has got any relevancy to the
25 indictment.

7 - A

1 THE COURT: Overruled.

2 THE WITNESS: We did ask Mr. Saia who was respon-
3 sible for the corporate, - to see that
4 the corporate returns were filed and Mr.
5 Saia said it was his responsibility;
6 that it was his responsibility to see to
7 it that the returns were prepared; that
8 he had hired an accountant, Mr. Perlman,
9 to do that.

10
11 BY MR. MELLENGER:

12 Q. Did you ask him whether or not the returns were filed
13 for the years '68, '67 and '66?

14 A. We asked him if the returns had been filed for those
15 years. He said he didn't think so and then later in
16 answer to a question as to when the last return was
17 filed, felt possibly 1966 or 1967. He said that those
18 were the items that the accountant, Mr. Perlman, was
19 working on.

20 Q. Did you ask him anything about who signs the corporate
21 returns?

22 A. In answer to a question concerning the responsibility of
23 signing the return or who signed the return, Mr. Saia
24 stated that he signed the returns.

25 MR. FEIN: Your Honor, I am going to object
8 - A

1 because he just stated that the returns
2 hadn't been filed. How can he ask about
3 who signed them?

4 THE COURT:

That is argument. I will overrule
5 the objection. You may be right. It may
6 be inconsistent, but we will let the
7 answer stand. Go ahead.

8
9 BY MR. MELLENGER:

10 Q. And did you ask him to see the corporate records?

11 A. We asked for the corporate records. Mr. Saia stated
12 that the records were in possession of the accountant,
13 Robert Perlman. He said he had nothing there on the
14 premises, that we would have to see Mr. Perlman who
15 lived in Niagara Falls to get the records.

16 Q. Did you ask him anything about his suppliers and customers?

17 A. Yes. We asked the names of his large suppliers or
18 customers and Mr. Saia indicated that they had no large
19 suppliers or customers, that most of his sales were,
20 most of his purchases were from individuals were old
21 car batteries and radiators which he then sold to R & R
22 Wrecking in Buffalo.

23 Q. Did he indicate a period of time that most of his --

24 A. He indicated the last three years at that time.

25 Q. And what did you do after you concluded this interview

9 - A

1 with Mr. Saia?

2 A. Well, we left there and proceeded to the residence of
3 Robert Perlman, Niagara Falls, to obtain the corporate
4 records. However, Mr. Perlman did not have the corporate
5 records.

6 Q. And what did you do then?

7 A. We returned to the offices of Empire Scrap Metal and
8 advised Mr. Saia that Mr. Perlman had told us --

9 MR. FEIN: I object, your Honor. That is
10 hearsay.

11 THE COURT: All right. I will sustain what
12 Mr. Perlman said. You tell us what went
13 on there with Mr. Saia.

14 THE WITNESS: We got back. We advised Mr. Saia
15 that the records were not available from
16 Mr. Perlman, that the records were there
17 at Empire Scrap Metal. Mr. Saia said
18 that Mr. Perlman didn't know what he was
19 talking about. He went to the phone and
20 he called Mr. Perlman and they had a
21 discussion on the phone. After he hung
22 up, Mr. Saia said that Mr. Perlman had
23 given the records to Nick Riso to work
24 on. He said that he told Mr. Perlman to
25 get in touch with Nick Riso and get the

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WESTERN DISTRICT OF NEW YORK

1 records. He then told us that Nick Riso
2 was employed by National Bookkeeping of
3 Buffalo and we advised Mr. Saia we were
4 going to give him a summons for produc-
5 tion of corporate records and they were
6 to be produced on July 24th.

7 MR. RODENBERG: Your Honor, I object to that. That
8 has no pertinence here, whether he did
9 or didn't give him a summons.

10 THE COURT: All right, strike the giving of the
11 summons. What did you do next, Mr.
12 DiNatale?

13 THE WITNESS: Well, we asked him to get in touch
14 with us when the records were available
15 to make arrangements to pick them up and
16 we then left.

17
18 BY MR. MELLENGER:

19 Q. Pursuant to this understanding, did he ever get in touch
20 with you?

21 A. Yes. Well, we were contacted by Nick Riso.

22 Q. And did you ever have occasion after that date to have
23 a conversation with Mr. Nick Saia?

24 A. Yes.

25 Q. And when was that?

11 - A

1 A. That was on July 24, 1969.

2 Q. And to the best of your recollection, what was said
3 during that conversation?

4 A. Well, our original intent was to --

5 MR. FEIN: Excuse me, your Honor. He is using
6 his original intent. I don't think that
7 is responsive.

8 THE COURT: Strike out "original intent". Ask
9 the question again, Mr. Mellenger.

10

11 BY MR. MELLENGER:

12 Q. Okay. To the best of your recollection, what did you
13 say to Mr. Saia and what did he say to you?

14 A. We asked Mr. Saia if he had, - when was the last year
15 in which a corporate tax return was filed. Mr. Saia
16 said that he believed it was 1964. We advised him that
17 several years had elapsed since he had filed a return
18 and why a return hadn't been filed, and he indicated that
19 he thought that Mr. Perlman was taking care of it. We
20 advised him that in the original interview that he
21 stated to us that Melanie Saia was the president of the
22 corporation and she had taken no active part in the
23 corporation and he said that he was the sole owner and
24 operator. He acknowledged that he had responsibility
25 to see to it that the returns were filed and it was true

12 - A

1 that he also had the responsibility to see to it that
2 the delinquent returns were filed. He also said that
3 he knew the delinquent returns were not being prepared
4 or filed and he should have fired Mr. Perlman and got a
5 new accountant.

6 Q. Did you ask him again at that point anything about a
7 bookkeeper?

8 A. We asked him if he had a bookkeeper that had worked
9 there prior to his hiring a bookkeeper earlier in that
10 year and he said that a Frank Gurley was a yard man and
11 bookkeeper that worked for him until he lost his arm in
12 an accident in the scrap yard.

13 Q. And after that meeting, did you ever have occasion to
14 meet with Mr. Nick Saia again?

15 A. Yes, on August 13th of 1969.

16 Q. And what was said during that meeting?

17 A. Well, at that time Mr. Saia advised us that --

18 MR. FEIN:

Your Honor, may I interject and
19 ask would he spell out who was at these
20 meetings. This has just been so general
21 I am afraid losing track of who was
22 present.

23 THE WITNESS:

The August 13th meeting Mr. Sam
24 Saia, Mr. Nicholas Saia, Nick Riso,
25 Nicholas Como, Special Agent Nick Como

13 - A

1 and myself.

2

3 BY MR. MELLENGER:

4 Q. And what was said at this meeting?

5 A. Mr. Nick Saia advised us that his brother-in-law Joseph
6 Rugerio --

7 MR. FEIN: Excuse me, your Honor. What was
8 the question?

9 THE COURT: When you say "Mr. Saia", we do not
10 know which one.

11 THE WITNESS: I talked to Mr. Nicholas Saia.

12 THE COURT: All right. Sam was at the meeting
13 too?

14 THE WITNESS: Yes. I mentioned Nicholas.

15 THE COURT: So you better tell us who is
16 speaking. I am sorry. I thought you
17 said "Mr.".

18

19 BY MR. MELLENGER:

20 Q. Who was speaking at this time?

21 A. Mr. Nicholas Saia.

22 Q. And what did he say to you?

23 MR. FEIN: Excuse me. Where was this meeting?

24 THE WITNESS: In the offices of Empire Scrap Metal.

25 MR. FEIN: And what date?

1 THE WITNESS: August 13th.

2

3 BY MR. MELLENGER:

4 Q. And what did he say to you during this meeting?

5 A. He advised us that he had given his brother-in-law Joe
6 Rugerio or he had asked, - well, his brother-in-law
7 would pick up income checks.

8 MR. FEIN: Your Honor, may I object to this.
9 I don't know what the question was that
10 was put to Mr. Saia.

11 THE COURT: You keep interrupting. The question
12 was what was said, what did Mr. Nick
13 Saia say. All right, Mr. DiNatale.

14 THE WITNESS: Well, there were no questions directed
15 to Mr. Saia. We were talking. I in
16 error had mentioned Mr. Sam Saia was at
17 the interview, but he wasn't. We were
18 talking to Mr. Rugerio.

19 THE COURT: You say Sam Saia was not there?

20 THE WITNESS: Right. I was in error. Mr. Sam
21 Saia was not there.

22 THE COURT: You and Como, he is also a Special
23 Agent and he was there?

24 THE WITNESS: That is correct.

25 THE COURT: Nick Saia and Rugerio were there?

15 - A

- 1 THE WITNESS: Right, and also Mr. Riso.
- 2 THE COURT: Mr. Riso, all right.
- 3 THE WITNESS: We were interviewing Mr. Rugerio
4 and at one point in time Mr. Saia inter-
5 jected in this interview so we did not
6 ask Mr. Saia a question. He just inter-
7 jected with the fact that Mr. Rugerio
8 was picking up the income checks for him.
9
- 10 BY MR. MELLENGER:
- 11 Q. Did he say who Mr. Rugerio was?
- 12 A. His brother-in-law.
- 13 Q. And did he say anything to you why he had his brother-
14 in-law pick up the income checks?
- 15 A. He had his brother-in-law pick up the income checks
16 because he did not trust his workers and that he had
17 his brother-in-law, - the bills from the customers were
18 made out to Empire Scrap Metals, Inc. However, he asked
19 the customers to make out the checks to Joseph Rugerio.
20 Mr. Rugerio would pick up the checks and he would cash
21 them and turn the money over to Mr. Saia.
- 22 Q. Would this be Mr. Nick Saia?
- 23 A. Mr. Nick Saia who indicated that he needed the cash to
24 operate the business, that it was strictly a cash
25 business and that in particular when Mr. Rugerio picked

16 - A

1 up Canadian checks, he would cash them in Canada so as
2 to avoid the problem with the exchange here.

3 Q. And did he state anything about expanding this practice?

4 A. Yes. He indicated that he had also done this with other
5 customers.

6 Q. And did you ask Mr. Saia whether he paid his brother-in-
7 law anything for doing this?

8 A. Yes. We did ask him that. The answer that we received
9 was that they were a very close family and they helped
10 each other out and Mr. Rugerio did in fact live with
11 his mother.

12 Q. What, if anything, did you ask about over-the-counter
13 sales of the business?

14 A. We asked, - I believe we asked Mr. Riso if there were
15 any over-the-counter sales and Mr. Nick Saia answered
16 the question stating that there were no over-the-counter
17 cash sales, that all of his sales were to large customers
18 who, when they received the metal, they would press it
19 and then sell it to large metal bulk dealers.

20 MR. MELLENGER: I have no further questions.

21
22 CROSS EXAMINATION BY MR. RODENBERG:

23 Q. Sir, now there were three instances when you had
24 conferences with a Mr. Nicholas Saia, is that correct,
25 July, July and August 13th?

17 - A

1 Q. Okay. Was there any record made of the undeposited
2 money?

3 A. Not that I know of.

4 Q. While you were working at Empire Scrap, what, if anything,
5 did you observe there to indicate that Joe Rugerio may
6 have been in business for himself?

7 MR. RODENBERG: You, Honor, I am going to object to
8 that. That is no part of the indictment.

9 THE COURT: That is a conclusion, certainly.
10 This is after again, so I will sustain
11 the objection now. This is a different
12 area. I will sustain the objection
13 because it is after the indictment time.

14 MR. MELLENGER: I have no further questions.
15

16 CROSS EXAMINATION BY MR. RODENBERG:

17 Q. Ma'am, you worked for this corporation from February
18 until May of 1969, is that correct?

19 A. Yes, sir, I did.

20 Q. And these practices you have told us about with reference
21 to being directed to destroy certain slips and change
22 certain other slips, when were they first given you?

23 A. They were given to me when I started.

24 Q. Did you know each, - either of these defendants before?

25 A. No.

18 - B

- 1 Q. You went to work?
- 2 A. No.
- 3 Q. And it is your testimony that you came to work for this
4 scrap company in February of '69, is that right?
- 5 A. Correct.
- 6 Q. And immediately these people told you to destroy certain
7 slips, to change other slips, is that right?
- 8 A. Correct.
- 9 Q. All right. Now, I take it you did not keep any record
10 of which defendant gave you which instruction at any
11 specific time, is that right?
- 12 A. They gave me instructions together.
- 13 Q. They gave you instructions together?
- 14 A. Yes, sir.
- 15 Q. Do you know the time, - that is, the specific period
16 when they would have given you this instruction or these
17 instructions?
- 18 A. Sir, that was eight years ago.
- 19 Q. That's right, so you don't remember, do you?
- 20 A. I remember them giving them to me, yes.
- 21 Q. But you didn't keep any record as to when time-wise
22 these were given you, is that correct?
- 23 A. Yes, sir.
- 24 Q. So your testimony now is general based on your recollec-
25 tion, right?

19 - B

1 A. Yes, sir.

2 Q. All right. Now, before you came here, did you not
3 discuss this matter with the U. S. Attorney?

4 A. Yes, sir.

5 Q. All right, and whom else did you discuss it with other
6 than the U. S. Attorney?

7 A. The agents.

8 Q. All right. Now, what agents, if you remember?

9 A. Do you mean their names?

10 Q. Yes.

11 A. All I can remember is Como.

12 Q. All right. Anyway, you discussed it with a U. S.
13 Attorney, right?

14 A. Yes, sir.

15 Q. And you discussed it with at least one federal agent,
16 is that right?

17 A. Yes, sir.

18 Q. All right. Now, when was the most recent, the last
19 time you have discussed this with the agent and/or the
20 United States Attorney?

21 A. Yesterday.

22 Q. Yesterday, and before that when did you discuss it with
23 them?

24 A. Last week.

25 Q. And before that, when did you discuss it with them?

- 1 A. Three years ago.
- 2 Q. Three years ago, right, so that you have discussed it
- 3 with them at least twice in the last month, is that
- 4 correct?
- 5 A. Yes, sir.
- 6 Q. All right. Now, did you tell these agents that you did
- 7 not begin working there until February of '69?
- 8 A. Yes, sir.
- 9 Q. You told them that, right?
- 10 A. Yes, sir.
- 11 Q. Did they tell you what the indictment period was; did
- 12 they mention to you for what years the indictment period
- 13 against these defendants was?
- 14 A. I can't recall if they did.
- 15 Q. So you did not even, - you did not know what the years
- 16 charged to the defendants for the violations which were
- 17 charged to them encompassed, is that correct?
- 18 A. Correct.
- 19 Q. You don't know now, do you?
- 20 A. No, sir.
- 21 Q. You have absolutely no knowledge, have you, of how this
- 22 scrap corporation conducted its business in the year
- 23 1968, is that correct?
- 24 A. Correct.
- 25 Q. The year '67, '66 and '65, is that right?

- 1 A. Correct.
- 2 Q. And your knowledge of what the operation you have
3 described here is limited once again to the period from
4 February '69 until you ceased working in May of '69,
5 right?
- 6 A. Correct.
- 7 Q. Now, that is the situation as you know it, right?
- 8 A. Correct.
- 9 Q. All right. Now, the agents when you discussed this with
10 Mr. Como yesterday or last week, was it necessary for
11 him to remind you as to any of the details which you
12 have testified to here?
- 13 A. Not really, sir.
- 14 Q. Now, when you say "not really", what do you mean?
- 15 A. He asked me questions and I started to remember.
- 16 Q. I see. Now, when he asked you these questions, did he
17 make any remarks to you to assist you in remembering?
- 18 A. No, sir.
- 19 Q. He didn't, all right. What, for instance, if you recall
20 was one item which he may have asked you?
- 21 A. The period of time I worked.
- 22 Q. He asked you the period of time you worked and you told
23 him '69, right?
- 24 A. Yes, sir.
- 25 Q. And he did not tell you that this trial covered a period

22 - B

1 which ended in '68, did he?

2 A. No, sir.

3 Q. And you didn't know it until you got on the stand, is
4 that right?

5 A. Right.

6 Q. Now, you say there are certain times that Sam Saia told
7 you "Destroy this piece of paper, right?

8 A. Right.

9 Q. Now, do you know specifically when that was in '69?

10 A. Just between the period. Most of it was done in February.

11 Q. You say "most of it was done in February", is that right?

12 A. When I started, correct.

13 Q. Now, that was for, do you recall what period those slips
14 you may have been asked to destroy covered?

15 A. 1965. I remember the year.

16 Q. You say that that was from back in 1965, right?

17 A. Yes, sir.

18 Q. You made no notes, I assume, as to which one you were
19 destroying, did you?

20 A. No, sir.

21 Q. You have no idea, do you, how much those totals would
22 have been, the slips destroyed, do you?

23 A. No, sir.

24 Q. This job you had at the scrap company, was that a full-
25 time job for the period of time you have described?

23 - B

1 A. It was up until the ending.

2 Q. I say you worked an eight-hour day from February through
3 May of '69, is that right?

4 A. Towards the end it wasn't.

5 Q. But there was a period where it was a full-time job,
6 right?

7 A. Yes, sir.

8 Q. Now, you have testified, - have you not told us that
9 some instructions were given you by Sam Saia and some
10 by Nick Saia?

11 A. Yes, sir.

12 Q. Right, but you don't recall, do you, specifically which
13 instruction was given you by which defendant?

14 A. They both gave me the same instructions.

15 Q. Do you mean they were both standing there together and
16 said "Here, destroy this piece of paper", is that what
17 you mean?

18 A. No, sir.

19 Q. What do you mean?

20 A. One would tell me to destroy it and the other one would
21 say the same thing later on.

22 Q. For the same piece of paper?

23 A. No, sir.

24 Q. For what?

25 A. For the same job, for doing the same thing but not with

24 - B

- 1 the same paper.
- 2 Q. And this, - the slips, you don't recall what time period
3 they encompassed, do you?
- 4 A. It goes back from 1965.
- 5 Q. You remember, you mean, looking at these slips and they
6 would say '65, right?
- 7 A. Yes, sir.
- 8 Q. And then some would say '66, is that right?
- 9 A. Correct.
- 10 Q. All right. Do you have any idea how much the slips you
11 destroyed representing 1965 totaled?
- 12 A. No, sir.
- 13 Q. You didn't keep any record, did you?
- 14 A. No, sir.
- 15 Q. Could have been \$30, could have been thirty thousand,
16 right?
- 17 A. I don't know how much it was.
- 18 Q. That is what I say, you do not know how much it was,
19 is that correct?
- 20 A. Correct.
- 21 Q. And I assume that goes for any other year where you were
22 directed to destroy slips, is that right?
- 23 A. Correct.
- 24 Q. You never questioned these people; they told you to do
25 this and that is what you did, is that it?

1 A. Correct.

2 Q. And had you had any prior experience in this type of
3 work?

4 A. No, sir.

5 Q. You were untrained as a bookkeeper?

6 A. I had from school.

7 Q. You came there right from school, is that right?

8 A. No, sir.

9 Q. You worked elsewhere, did you, earlier?

10 A. Yes, sir.

11 Q. But the upshot is you agree that you do not know what
12 the totals of the slips you say you destroyed were for
13 any given year, is that right?

14 A. Correct.

15 MR. RODENBERG: Thank you.

16 THE COURT: Mr. Fein, do you have any questions?

17

18 CROSS EXAMINATION BY MR. FEIN:

19 Q. Mrs. Grabiec, is it?

20 A. Yes, sir.

21 Q. Did you make a statement to the Internal Revenue Service?

22 A. Yes, sir.

23 Q. Do you have a copy of that statement?

24 A. Not with me.

25 MR. FEIN: Do we have a copy?

26 - B

18 You may still feel a bit apprehensive
19 about all the documents. Well, we have
20 someone here who is going to help you.
21 You see back in the courtroom there an
22 individual seated and his name is John
23 Cotter. Mr. Cotter, at the end of all
24 the Government's proof will take the
25 stand and he will help you wade through
1 the evidence. He is a revenue agent and
2 he has been doing this for approximately
3 fifteen years. He has studied accounting
4 in school and he does this type of thing
5 for a living and he will show you, he
6 will guide you more or less through all
7 this maze of checks and invoices and
8 accounting records.

Now, let's look at what else the Government must prove. Well, must prove the returns were false and fraudulent or contained material misstatements. As I have stated before, Mr. Cotter showed you that and we have gone through the amounts a sufficient number of times.

Let's comment on the schedule for a second because as you have heard, Mr. Cotter's function in this trial was to be a guide through the evidence to help you people go through the evidence and you have to understand what Mr. Cotter did in order to enable him to be that guide.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA

Plaintiff-Appellee

vs

NICHOLAS SAIA

Defendant-Appellant

77-1506

Docket No. T-8230

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

SALTEN RODENBERG, being duly sworn, deposes and says:

That on the 15th day of February, 1978, he served three copies of appellant's brief and three copies of appellant's appendix on the United States Attorney's Office, United States Courthouse, Buffalo, New York.

Salten Rodenberg
Salten Rodenberg

Sworn to before me this

15th day of February, 1978.

Ann Marie Brownstein
Comm. of Deeds, Buffalo, New York
My Comm. Expires December 31, 1978.